

**EXHIBIT E**

1 Thank you.

2 THE COURT: All right. Well, let me tell you what my  
3 problems are with the proposed DIP.

4 While I agree with the debtor we can't use hindsight  
5 to decide that the debtor should have only sought use of cash  
6 collateral. I accept that the debtor did not have much  
7 leverage. I -- without any other DIP loans available. I do  
8 think this DIP is -- I won't use the word "outrageous." But it  
9 really does not fall within the zone of reasonable DIPs.

10 And first and foremost, both from day one and  
11 certainly it's been proven today, it's clear that while they  
12 said that they were providing new money based on the formula,  
13 there was no real ability for new money unless they were paid  
14 down. And it's clear that what has now occurred is that this  
15 is a sale case. And it's clear, I think, in all my prior  
16 rulings, that if a case is being run for the benefit of the  
17 lenders in order to foreclose upon their collateral, the  
18 lenders are going to have to pay the cost of that. And that  
19 includes all administrative. It includes the rent. It  
20 includes professional fees. Whether or not the debtor is  
21 correct, and I don't think the debtor is, there is no  
22 commitment right now under the carveout language or otherwise  
23 to pay accrued fees that accrue after May 28th.

24 There is no commitment to pay the stub rent. There's  
25 a commitment to escrow \$8 million, a fraction of the stub rent

1 for the GOB leases. But there's no commitment to allow that  
2 payment to be made. And I assume that the lenders are going to  
3 retain a security interest in that cash escrow agreement. Even  
4 if they don't, that's clearly insufficient.

5 The debtor is correct under Montgomery Ward, you don't  
6 have to pay the stub rent on the first day of the case. But in  
7 a case where the landlords and other administrative claims are  
8 clearly not budgeted or being paid while the landlord -- excuse  
9 me, while the secured lenders' collateral is being liquidated  
10 and their secured claim is being paid, I have a serious problem  
11 with that.

12 I think the fix is no 506(c) waiver for anybody. And  
13 to the extent that administrative claims are not paid at the  
14 end of this case, there will be a claim against the lenders for  
15 those costs under 506(c) to the extent they were necessary for  
16 the preservation or realization of their collateral.

17 With respect to the DIP fees and interest, I accept  
18 the debtors' testimony that the interest and other fees are  
19 simply what were otherwise due to the lenders under the pre-  
20 petition claims with the exception of the one six-million-  
21 dollar fee. I am not as outraged by that as the committee is,  
22 and I don't think that that was unreasonable because I can't  
23 look at it in hindsight. I have to look at it from the  
24 debtors' perspective at the day they entered into this DIP  
25 loan, and given the terms and the amount, I'm not -- my